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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 189.

LAURA ELLEN JONES, WIDOW AND EXECUTRIX AND TUTRIX OF THE MINOR HEIRS OF SIDNEY A. STOCKDALE, DECEASED, LATE COLLECTOR OF INTERNAL REVENUE, PLAINTIFF IN ERROR,

vs.

W. T. BLACKWELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED SEPTEMBER 27, 1877.

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Petition for writ of certiorari, filed November 27th, 1872.

1 UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth circuit and district of Louisiana.

W. T. BLACKWELL
vs.
S. A. STOCKDALE. } No. 6841.

To the Hon. the circuit court of the United States for the fifth circuit and district of Louisiana:

The petition of S. A. Stockdale with respect shows—

That he is an officer of the United States, to wit, collector of internal revenue for the first collection district of Louisiana, duly appointed and acting under an act of Congress entitled "An act to provide internal revenue to support government, to pay interest on the public debt, and for other purposes," passed 30th June, 1864, and the acts amendatory thereof.

2 That a civil suit has been commenced against him in a court of the State of Louisiana, to wit, in the fourth district court for the parish of Orleans, holding sessions in the city of New Orleans, by W. T. Blackwell, domiciled at Dunham, in the State of North Carolina, said suit being No. 38135 of the docket of said court, and process therein issued has been served upon petitioner in the district of Louisiana and within the jurisdiction of this court; that no trial of the said cause has as yet been had; that the said W. T. Blackwell seeks by the said suit to recover from petitioner the sum of three thousand one hundred and ninety-seven $\frac{70}{100}$ dollars for damages for alleged wrongful and illegal detention of certain tobacco in internal revenue export bonded warehouse.

The premises considered, your petitioner prays that a writ of certiorari may issue to the said fourth district court for the parish of Orleans, requiring it to send to this hon. court the record and proceedings in the said cause in conformity with *to* the 67th section of the act of

3 Congress, entitled "An act to reduce internal taxation, and to amend an act entitled 'An act to produce internal revenue to support the government, to pay interest on the public debt, and for other purposes,' approved 30th June, 1864, and acts amendatory thereof," approved July 13, 1866.

(Signed) J. W. GURLEY,
Ass't U. S. Att'y.

Affidavit.

S. A. Stockdale, petitioner herein, being sworn, says that all the allegations in the petition are true to the best of his knowledge and belief.

(Signed) S. A. STOCKDALE.

Sworn to & subscribed before me November 27th, 1872.

(Signed) F. A. WOOLFLEY,
U. S. Comm'r.

REC. 189—1

Certificate of counsel.

I certify that as counsel for petitioner, S. A. Stockdale, I have examined the proceedings against him, and carefully enquired into all the matters set forth in the petition, and I verily believe the same to be true.

(Signed) J. W. GURLEY,
Ass't U. S. Att'y.

Order thereon.

4 Let a writ of certiorari issue as prayed for.
November 27th, 1872.
(Signed) E. H. DURELL, *Judge.*

Writ of certiorari.—Issued November 27, 1872.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

Circuit court of the United States for the fifth circuit and district of Louisiana.

The President of the United States of America to the honorable the fourth district court for the parish of Orleans, greeting:

Because it has been represented to us in our said court that a cause has been lately instituted, and now is pending in said court, wherein W. T. Blackwell is plaintiff and Sidney A. Stockdale, an officer of the United States, to wit, collector of internal revenue for the first collection district of Louisiana, is defendant, said cause being represented to us as being No. 38135 of the docket of said court, and that
5 the said S. A. Stockdale has been served with process therein issued, and because the said S. A. Stockdale has this day filed in our said court his petition, duly verified and certified, as required by law, wherein he has complained that the said suit was and is instituted against him, so being such officer as aforesaid, for and on account of an act done by him as such officer, as aforesaid, under color of his said office, administering the revenue laws of the United States, and has in due form of law prayed of us that said suit be entered on the docket of our said court, and that the said cause be hereafter proceeded in all respects as if the said cause had been originally commenced in our said court, and we being willing that the same shall be done, and having ordered the said cause to be entered on the docket of our said court, where the said cause is now so docketed:

We therefore command you that you do forthwith certify to us in our said court a full record of all the proceedings had and of record
6 in your said court in, about, or concerning the said cause now remaining in your said court; that said cause may be proceeded in in our said court as by the statutes of the said United States provided and required.

Witness the honorable P. Chase, Chief Justice of the Supreme Court of the United States, this 27th day of Nov'r, A. D. 1872.

(Signed) F. B. VINOT,
D'y Clk.

Marshal's return thereon.

Received November 27, 1872, by the U. S. marshal, and on the 29th day of November, 1872, served a copy hereof with petition accompanying on the fourth district court for the parish of Orleans, by handing the same to Paul E. Theard, the judge thereof, in person, in this city.

November 29th, 1872.

(Signed) C. J. FOGARTY,
D'y U. S. Marshal.

Record from the fourth district court for the parish of Orleans.—Filed December 2d, 1872.

PETITION.

7 4th district court for the parish of Orleans.

W. T. BLACKWELL
vs.
S. A. STOCKDALE.

The petition of W. T. Blackwell, who resides at Dunham, in the State of North Carolina, respectfully represents:

That S. A. Stockdale, who resides in New Orleans, is justly and truly indebted unto petitioner in the full sum of three thousand one hundred and ninety-seven $\frac{70}{100}$ dollars, for damage and loss by him sustained on fifty-three cases (containing 300 p'k'g's) manufactured tobacco, by him, petitioner, owned and placed in U. S. internal revenue export bonded warehouse No. one, in this city, on the 14th June, 1872, and illegally detained in said warehouse in bond by defendant in his capacity of collector of U. S. int. rev., 1st dist. of Louisiana, from and after July 1st, 1872, until August 29th, 1872, contrary to and in direct violation of the express provisions and requirements of law and of petitioner's rights. By reason of all which illegal detention of said tobacco by defendant, and his refusal to deliver up the same to petitioner or
8 his agent, in full compliance with the requirements of law, petitioner has sustained damage to the amount of $3,197.70 as aforesaid, by being prevented from making a timely sale of said tobacco by deterioration of said tobacco, and damage by mould, by expense of storage, insurance, interest, &c.; by loss of profit; by expense incurred in obtaining final release and delivery of said tobacco, and other incidental expenses, losses, & damage.

In consideration of all which petitioner prays that said defendant be duly cited to appear and file answer to this his petition and demand, and that after legal proceedings had, judgment be rendered in his favor against sa'd defendant S. A. Stockdale, for the full sum of $3,197.70, with legal interest on the same and costs of court.

Petitioner further prays for general relief.

(Signed) GEO. W. CHRISTY,
Att'y for Pet'r.

Filed November 16th, 1872.

(Signed) FRANK WALL,
D'y Clerk.

Citation.

9 State of Louisiana, fourth district court for the parish of Orleans, in the city of New Orleans.

W. T. BLACKWELL
vs.
S. A. STOCKDALE. } No. 38135.

Mr. S. A. STOCKDALE,
New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court for the parish of Orleans in ten days after the service hereof.

Witness the honorable Paul E. Theard, judge of the said court, this 16th day of November, in the year of our Lord 1872.

(Signed) FRANK WALL,
Deputy Clerk.

Received November 19th, 1872, and on the 20th day of Nov., 1872, served a copy of the within and accompanying petition on S. A. Stockdale, in person.

(Signed) A. LABAT,
D'y Sh'ff.

Ret'd same day.
Sh'ff's fees, $2.
Filed Nov. 23d, 1872.
(Signed) F. A. ROBBINS, *D'y C.*

10 *Writ of certiorari.*

(Transcribed at pages 3 & 4 of above record.)

A true copy.
Clerk's office, fourth district court for the parish of Orleans, New Orleans, November 29th, 1872.
[SEAL.] (Signed) OSCAR ARROYO,
D'y Clerk.

Answer.—Filed December 12th, 1872.

Circuit court of the United States for the fifth circuit and district of Louisiana.

W. T. BLACKWELL
vs.
S. A. STOCKDALE, COLLECTOR, &C. } No. 6841.

Now comes the defendant, and, for answer to plaintiff's petition, denies all and singular the allegations therein contained, and prays to be
11 hence dismissed with costs.

(Signed) J. W. GURLEY,
Ass't U. S. Att'y.

Hearing and order continuance of cause.—Extract from the minutes. April term, 1875.

NEW ORLEANS, *Monday, May* 17, 1875.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

W. T. BLACKWELL
vs.
S. A. STOCKDALE, COLL'R, &C. } No. 6841.

This cause was called for trial, J. D. Rouse for plaintiff, U. S. attorney Beckwith for defendant, when the following jurors were called and sworn, to wit:

1. Stoddard Howell.
2. Mois Depas.
3. Alf. M. Seymour.
4. Ch's Edgard.
5. Marcelle Lard.
6. Frank Romero.
7. Hugh Short.
8. Geo. Baldy.
9. H. S. Latourette.
10. Henry Gormley.
11. J. C. Miller.
12. Jno. J. O'Brien.

And the panel being complete, the trial proceeded; when the counsel for defendant objecting to certain testimony offered by the plaintiff, the question was argued on both sides and the point reserved by the court, and the cause continued till to-morrow, at 11 a. m.

12 *Order case continued.—Extract from the minutes of May* 18, 1875.

W. T. BLACKWELL
vs.
S. A. STOCKDALE. } No. 6841.

For want of time it is ordered that the cause be continued till to-morrow, at 11 a. m.

Peremptory exception.—Filed May 19*th*, 1875.

Circuit court of the United States, district of La.

W. T. BLACKWELL
vs.
S. A. STOCKDALE, COLLECTOR OF INTERNAL revenue. } No. 6841.

And now comes the defendant, by J. R. Beckwith, U. S. att'y, and for peremptory exception to said plaintiff's petition herein, and to his said actions as set forth in said petition, saith that the said plaintiff ought not to further have and maintain his said action against this defendant
13 in this behalf because *because* he saith that the said petition and the matters therein contained in manner and form as the same are therein contained and set forth, are not sufficient in law for the said plaintiff to have and maintain his aforesaid action against this defendant, and that this defendant is not bound to answer the same; whereupon defendant prays judgment that said plaintiff be barred from proving or maintaining his said action against him.

(Signed) J. R. BECKWITH,
Att'y for Def't.

Order peremptory exception overruled & case cont'd.—Extract from the minutes of May 19, 1875.

W. T. BLACKWELL
vs.
S. A. STOCKDALE. } No. 6841.

This cause was resumed before the court and jury, when the court overruling the peremptory exception of the defendant, the trial proceeded, and after hearing the evidence the cause is continued till tomorrow at 11 a. m., and the jurors were admonished to converse with no one on the subject-matter before them.

14 *Verdict.—Extract from the minutes of May 20, 1875.*

W. T. BLACKWELL
vs.
S. A. STOCKDALE. } No. 6841.

After due deliberation the jury returned into court and delivered the following verdict, to wit:

NEW ORLEANS, *May 20th*, 1875.

We, the jury, find a verdict for defendant.

HENRY GORMLEY,
Foreman.

Whereupon it is ordered that the same be recorded.

Judgment.—Extract from the minutes of May 20, 1875.

W. T. BLACKWELL
vs.
S. A. STOCKDALE. } No. 6841.

By reason of the verdict and in accordance therewith, it is ordered, adjudged, and decreed that judgment be entered for the defendant with costs.

Rule for a new trial.—Ent'd & filed May 22d, 1875.

15 U. S. circuit court district of Louisiana.

W. T. BLACKWELL
vs.
S. A. STOCKDALE. } No. 6841.

On motion of J. D. Rouse and G. W. Christy, attorneys for plaintiff herein, it is ordered that the defendant show cause the 31 inst., at 11 o'clock a. m., why the verdict of the jury in this cause should not be set aside and a new trial be granted therein for the following reasons:

1st. Because the verdict is contrary to law and the evidence.

2d. Because the court erred in admitting evidence upon the trial offered by the defendant whereto the plaintiff objected.

3d. Because the court erred in refusing to instruct the jury as prayed by the plaintiff.

4th. Because the court erred in its instructions to the jury to which the plaintiff objected and excepted.

Order granting new trial.—Extract from the minutes of June 7th, 1841.

W. T. BLACKWELL
vs.
S. A. STOCKDALE. } No. 6841.

16 For reasons orally assigned by the court, it is ordered that the rule taken by the plaintiff on 22d ulto. be made absolute, that the verdict of the jury in this cause be set aside, and that a new trial be granted.

Supplemental and amended petition.—Filed December 24th, 1875.

U. S. circuit court, dist. of La.

BLACKWELL
vs.
STOCKDALE. } No. 6841.

And now comes W. T. Blackwell, plaintiff, and by leave of court amends his original petition herein, and for amendment he thereupon declares that being the owner of fifty-three cases (containing 300 packages) of manufactured tobacco, the same was duly entered and stored at New Orleans on or about the 14th day of June, 1872, in the U. S. internal revenue export bonded warehouse, number one, located in the city of New Orleans, and in the first collection district of the State of Louisiana, which said tobacco was then and there by law subject to
17 an internal revenue tax imposed by the laws of the United States, and all of said tobacco remained stored in said warehouse until the first day of July, 1872, on which date and thereafter there was by law imposed upon said tobacco a duty or tax of twenty cents per pound and no more.

That on said first day of July, 1872, the plaintiff by his agent, after full compliance with all the laws and lawful regulations in regard thereto and in that behalf, offered to pay to Sidney A. Stockdale, then and there being the proper collector of U. S. internal revenue in and for said first collection district of Louisiana, the full amount of tax due upon each and every pound and upon all of said tobacco, to wit, the sum of twenty cents per pound, it then and there being the duty of said Stockdale to receive said tax, which he refused; that the plaintiff thus offering to pay said tax, together with all lawful thereon, demanded of said collector the stamps required by law to be affixed to the packages in
18 which it was contained, and a delivery of said tobacco, but the said defendant then and there unlawfully and contrary to his duty in the premises refused to receive said taxes and refused to sell and deliver to plaintiff the stamps required by him as aforesaid, and refused to deliver said tobacco to said plaintiff, and so neglecting and refusing, continued so to neglect and refuse until the 29th day of August, 1872.

Petitioner further shows that said tobacco was sound, sweet, and in good merchantable condition at the time it was so placed in said ware-

house, and so it was on said first day of July, 1872, but during the period of its unlawful detention by said defendant as aforesaid and by reason thereof it became greatly damaged, unsale'ble, and reduced in value, whereby plaintiff sustained great loss and damage; and that by reason of said unlawful acts of said defendant he was subjected to increased costs for storage, insurance, interest, &c., said damage, loss, expense, &c., amounting in the aggregage to the sum of thirty-
19 one hundred and ninety-seven $\frac{70}{100}$ dollars, for which sum he prays judgment against said defendant, Sidney A. Stockdale, with legal interest from judicial demand and for costs of suit.

(Signed) J. D. ROUSE,
Att'y for Pl'ff.

Let this supplemental and amended petition be filed.
New Orleans, Dec'r 24, 1875.
(Signed) W. B. WOODS, *Judge.*

Motion and order for scire facias.—Ent'd & filed March 14th, 1876.

U. S. circuit court, dist. of La.

W. T. BLACKWELL
vs.
S. A. STOCKDALE. } No. 6841.

On motion of J. D. Rouse, attorney for the plaintiff herein, suggesting that the defendant, Sidney A. Stockdale, died puis darrein continuance, and that his succession has been duly opened in the second district court for the parish of Orleans, and is now being administered by Mrs. Laura Ellen Jones, widow of said Sidney A. Stockdale, as
20 testamentary executrix and natural tutrix of his minor children, by appointment of said court; it is ordered by the court that a writ of scire facias be issued from this court directed to the said Mrs. Laura Ellen Jones, widow of Sidney A. Stockdale, requiring her to be and appear before this hon. court within twenty days from the service thereof, to defend in the abbve-entitled cause as such testamentary executrix and natural tutrix according to law.

(Signed) W. B. WOODS, *Judge.*

Writ of scire facias.—Issued March 14th, 1876.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit and district of Louisiana.

W. T. BLACKWELL
vs.
S. A. STOCKDALE. } No. 6841.

The President of the United States to the marshal of the United States for the district of Louisiana, greeting:

21 Because it has been suggested to us in our said court in the cause of W. T. Blackwell against S. A. Stockdale, that the said Sidney A. Stockdale died puis darrein continuance, that his succession

has been duly opened in the second district court for the parish of Orleans, and it is now being administered by Mrs. Laura Ellen Jones, widow of said Sidney A. Stockdale, as testamentary executrix and natural tutrix of his minor children, by appointment of said second district court for the parish of Orleans.

And it being further suggested to us in our said court that it is important that the said Mrs. Laura Ellen Jones, widow of Sidney A. Stockdale, appear before this honorable court to defend in the above-entitled cause as such testamentary executrix and natural tutrix, and we being willing that the same shall be done in order that the end of justice may be accomplished:

We, therefore, by these presents command you that you make known unto the said Mrs. Laura Ellen Jones, widow of Sidney A. Stock-
22 dale, testamentary executrix and natural tutrix, that she be and appear in this hon. court within twenty days from the service of this writ to defend in the above-entitled cause as such testamentary executrix and natural tutrix according to law.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 14th day of March, A. D. 1876.

[SEAL.] (Signed) F. B. VINOT,
D'y Cl'k.

Marshal's return thereon.

Writ of scire facias received March 28th, 1876, by the U. S. marshal, and on the same day, month, and year served a copy hereof on Mrs. Laura Ellen Jones, widow of Sidney A. Stockdale, testamentary executrix and natural tutrix of his minor children, by delivering the same to her in person in the city of New Orleans.

S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

Answer to supplemental petition.—Filed December 20th, 1876.

U. S. circuit court.

W. T. BLACKWELL
vs.
23 S. A. STOCKDALE.

Now comes Mrs. Laura E. Stockdale, testamentary executrix, &c., of S. A. Stockdale, deceased, and for answer to the supplemental petition of plaintiff herein, filed on 24th Febr'y, 1875, denies all and singular the allegations therein, and prays to be hence dismissed with costs.

Judgment.—Extract from judgment book.

Circuit court of the United States, fifth circuit and district of Louisiana, November term, 1876.

NEW ORLEANS, *Friday, January 26th*, 1877.

Court met pursuant to adjournment: Present, Hon. E. C. Billings, district judge.

W. T. BLACKWELL
vs. No. 6841.
S. A. STOCKDALE.

By reason of the verdict, and in accordance therewith, it is ordered,

adjudged, and decreed, that the plaintiff, W. T. Blackwell, do recover from Mrs. Laura Ellen Jones, widow of Sidney A. Stockdale, de-
24 ceased, & testamentary executrix and natural tutrix of her minor children, who had heretofore been made party defendant herein, the sum of twenty-two hundred and seventy-five $\frac{72}{100}$ dollars and costs of suit.

And it appearing to the court that the said S. A. Stockdale was a collector of internal revenue, and that the act complained of in plaintiff's petition, for the commission whereof the plaintiff has recovered judgment for the amount above set forth besides all costs, was committed by said defendant while acting as such collector of internal revenue, and that in the commission thereof he acted under the direction of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, his superior officers, it is so certified of record in this cause, and by reason of the provisions of the act of Congress approved March 3d, 1863, entitled "An act to punish frauds upon the revenue, to provide for the more speedy collection of claims in favor of the United States and for other purposes," it is ordered that no execution
25 issue upon the final judgment herein, against the said defendant, Laura Ellen Jones, widow of S. A. Stockdale, but that the said judgment be provided for and paid out of the proper appropriation from the Treasury of the United States.

Judgment rendered January 26, 1877.

Judgment signed January 31st, 1877.

(Signed) EDWARD C. BILLINGS,
Judge.

Bill of exceptions.—Filed January 30th, 1877.

Circuit court of the United States, district of Louisiana.

W. T. BLACKWELL *vs.* LAURA ELLEN JONES, WIDOW AND TESTAMENTARY executrix & tutrix of the minor heirs of the late Sidney A. Stockdale, collector of int. rev.	No. 6841.

Be it remembered that afterwards, to wit, on the 26th day of January, A. D. 1877, of the November term of said court A. D. 1876, this cause came on for trial before his honor Edward C. Billings, judge of the district court of the United States for the district of Louisi-
26 ana, presiding in and holding said court, when came also as well the said plaintiff, by his attorneys, as the said defendant, by J. R. Beckwith, U. S. attorney for the district of Louisiana, appearing herein by direction of the Secretary of the Treasury, and a jury, when the plaintiff introduced witnesses and evidence tending to show that the tobacco referred to in the petition was shipped by the plaintiff from Virginia in bond to the port of New Orleans, and *in bond and* that the same was entered in bond in an export bonded warehouse in New Orleans on or about the 13th day of June, A. D. 1872.

That on the first day of July, A. D. 1872, the plaintiff, by his agents, applied to the late Sidney A. Stockdale, at that time collector of internal revenue for the first collection district in Louisiana, including the said city of New Orleans, to withdraw said tobacco from bond for sale or consumption, offering to pay for stamps or tax on said tobacco at

the rate of twenty cents per pound; that the said collector refused
27 to permit the withdrawel of the same unless a tax at the rate of thirty-two cents per pound was first paid; that the plaintiff protested against the demand of thirty-two cents and refused to pay the same, and that the tobacco remained in the warehouse.

That afterwards, in the month of August, 1872, the plaintiff tendered the collector money for stamps at the rate of thirty-two cents per pound; that at the time of such tender the collector was not in possession of thirty-two cents tobacco stamps, and was unable to immediately comply with the demand, but made requisition for the stamps on the proper authorities in Washington. That before the arrival of said thirty-two cents stamps in New Orleans, and on or about the 30th day of August, 1872, the plaintiff was permitted to withdraw the tobacco from bond on the payment of twenty cents per pound. That when the tobacco was so stored in bonded warehouse it became damaged, and that the plaintiff suffered loss thereby.

That the defendant introduced witness and proof which tended
28 to show that the Commissioner of Internal Revenue and the said collector of internal revenue construed the 31st section of the act of Congress of June sixth, 1872, 17th Statutes at Large, 255, to levie the duty or tax of thirty-two cents due on all tobacco placed in export bonded warehouse between the dates of June 6th, 1872, and the first day of July, 1872, and for that reason demanded thirty-two cents per pound on the tobacco in question, and that the same was released from bond after the question had been referred to the Attorney-General of the United States, and he had decided that only a tax of twenty cents per pound was due on tobacco placed in bond at the time said tobacco was bonded.

That after the evidence was closed and before the jury retired to deliberate on their verdict, the court among other things delivered to the jury as the opinion of the court the following charges and opinion.

1st. That on and after the first day of July, 1872, and prior to
29 the 3d March, 1873, the only tax imposed by law upon manufactured tobacco was twenty cents per pound, and that the collection of it was payable by the purchase of stamps from the collector of internal revenue.

2d. If the jury are satisfied that on and after the 1st day of July, 1872, the plaintiff was the owner of the tobacco described in the petition, and that the same was in a bonded warehouse, bonded under the act of Congress at the city of New Orleans, and that plaintiff on and after the 1st day of July, 1872, demanded of the defendant the delivery of said tobacco, and at the same time offered to comply with all the forms of the law to pay the tax of twenty cents per pound thereon, and that the defendant refused to issue tax paid stamps to the plaintiff, or to his agent, or to deliver the tobacco to the plaintiff, that then the refusal on the part of the defendant and any subsequent detention of the tobacco was unlawful, and entitles the plaintiff to a verdict for such damages as he actually sustained.

30 To which said ruling, opinion and charge of the said judge to said jury, the defendant by his said counsel did then and there except in open court.

That the said defendant by her said counsel did then and there submit to the court the following matter in writing, and did then and there pray the court that the same be delivered to the jury as the charge and opinion of the court in the premises, to wit:

"I am requested by the district attorney to charge you as follows: If the jury believe from the evidence that the late Sidney A. Stockdale

was collector of internal revenue of the United States for the first collection district of Louisiana, at the time of the occurrence of the alleged matters complained of in the petition, in that case in the discharge of his duties as such officer he was charged with the duty of determining
31 the construction and meaning of the laws of the United States imposing internal revenue taxes, subject to the direction of his superior officers and the determination of the courts. That his duties and powers in this respect were quasi judicial, and to entitle the plaintiff to recover in this cause, the jury must be satisfied from the evidence that the said S. A. Stockdale, when acting as collector of internal revenue, in his decision as to how much tax was due and by him to be demanded from the plaintiff on the tobacco in question, did not commit an honest error of judgment, but acted in malice and intentional wrong, with intent to injure the plaintiff from improper and illegal motives."

And the court did then and there refuse to give the same to the said jury, and in relation thereto, and with said refusal, did give the jury in charge, as the law governing the said cause, the following charge and opinion, that is to say:

"I refuse to give that charge, but will charge instead that, if
32 the jury are satisfied that the collector, acting under the instructions of the Commissioner of Internal Revenue, honestly believed that his construction of the law was correct, this cannot justify the defendant. It may be considered by the jury as tending to show that the collector acted with an honest purpose to enforce*d* what he deemed to be the law, and that he acted without malice, that in case such was his purpose and motive, it would prevent the plaintiff from recovering damage beyond what he actually suffered, and it would have no other effect in this action.

"As to the measure of damages, the only remaining question, the damages are only those actually suffered. You will get at the amount of these damages as practical men. You have heard the evidence as to the condition of the tobacco at the time of this alleged demand and offer; you have heard the evidence as to its condition at the time when
33 the defendant withdrew his refusal, because it is between these two dates that the unlawful detention existed. It commenced with the refusal and ended whenever you find that the refusal was withdrawn, that is, when Mr. Stockdale told the plaintiff he could have the tobacco on the payment of twenty cents per pound. You will compare the situation of the tobacco at these two times, and whatever deterioration you find to have taken place in that tobacco between these two points of time, that amount of damage the plaintiff, under the instructions I give you, is entitled to recover, together with the costs of storage during the period of detention which I have indicated."

To which said ruling and direction of the court in refusing to deliver and give the jury the said matter so requested by the said defendant, as well as the said charge and opinion aforesaid so given to said jury in refusal and instead thereof, as above set forth, the said defendant did then and there in open court except, and then and there tender to
34 the court his bill of exceptions in that behalf, and pray that the same be signed and sealed and made a part of the record in this cause, and it is done accordingly.

(Signed) EDWARD C. BILLINGS, *Judge.*

Motion & order for writ of error.—Extract from the minutes of February 14th, 1877.

W. T. BLACKWELL
vs.
LAURA ELLEN JONES, EXECUTRIX OF THE estate of Sidney A. Stockdale, late collector of internal revenue. } No. 6841.

On motion of J. R. Beckwith, U. S. attorney, appearing herein by direction of the Secretary of the Treasury, it is ordered that the said defendant be and hereby is allowed a writ of error herein, in due form of law, returnable in the Supreme Court of the United States, in the city of Washington, on the first day of the next term thereof, and that the same operate a supersedeas herein without bond or security, as provided by statute of the United States in such case made and provided.

35 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 34 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had on the trial of the case of W. T. Blackwell vs. S. A. Stockdale, No. 6841 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 5th day of July, A. D. 1877.

[SEAL.] F. A. WOOLFLEY,
Clerk.

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 5th day of July, A. D. 1877.

EDWARD C. BILLINGS,
Judge.

36 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between W. T. Blackwell, plaintiff, and Laura Ellen Jones, widow and testamentary executrix of the last will and testament and natural tutrix of the minor heirs of the late Sidney A. Stockdale, a

manifest error hath happened, to the great damage of the said defendant above named, Laura Ellen Jones, testamentary executrix, &c., as by her complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 14th day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court. No. 6841. Laura Ellen Jones, ex., &c., plaintiff in error, versus W. T. Blackwell, defendant in error. Writ of error. J. R. Beckwith, attorney of plaintiff in error. Filed February 14th, 1877. F. B. Vinot, d'y cl'k.

37 UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to W. T. Blackwell, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Laura Ellen Jones, testamentary executrix of the last will and testament and natural tutrix of the minor heirs of Sidney A. Stockdale, deceased, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Laura Ellen Jones, testamentary executrix and plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 14th day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

EDWARD C. BILLINGS,
Judge.

38 (Indorsed:) United States circuit court. No. 6841. Laura Ellen Jones, testamentary executrix, &c., plaintiff in error, vs. W. T. Blackwell, defendant in error. Citation.

Marshal's return.

Received Feb. 14, 1877, by the U. S. marshal, and on the 15th day of February, 1877, served a copy hereof on W. T. Blackwell, defendant in

error, by handing the same to J. D. Rouse, att'y for said Blackwell, in person in this city.

S. W. REED,
D'y U. S. Marshal.

(Indorsement on cover:) No. 189. Laura Ellen Jones, widow & executrix & tutrix of the minor heirs of Sidney A. Stockdale, dec'd (late collector internal revenue), plaintiff in error, vs. W. T. Blackwell. Louisiana C. C. U. S. Filed 27th September, 1877.

ADDITION TO RECORD No. 189.

1 UNITED STATES OF AMERICA.

Circuit court of the United States for the fifth circuit and district of Louisiana.

W. F. BLACKWELL
vs.
S. A. STOCKDALE. } No. 6841.

I, Francis A. Woolfley, clerk of the said court, do hereby certify that in making up the transcript pursuant to the writ of error in the above-entitled cause, for the Supreme Court of the United States, the entry on the minutes of the said circuit court of the 26th day of January 1877, showing the proceedings on the trial of the said cause, was inadvertently omitted from said transcript, which said entry on the minutes is in the words and figures following, to wit:

"W. T. BLACKWELL
vs.
S. A. STOCKDALE. } No. 6841.

2 This cause was called for trial. Rouse & Grant and G. W. Christy for plaintiff; J. R. Beckwith, U. S. attorney for defendant. When the following jurors were called and sworn to try the issue:

1. Edward Courcelle.
2. Wm. Rodolph.
3. Thos. A. Archer.
4. Eugene Duplessis.
5. Walter C. Cook.
6. Bazile Crocker.
7. Francis Metéyé.
8. Chas. E. Fortier.
9. Wm. Byrne.
10. B. T. Walshe.
11. Emile Marie.
12. Victor Demoruelle.

And the jury being complete, the court appointed B. F. Walshe foreman, and the trial proceeded, and after hearing the pleadings, evidence, and argument, and receiving a charge from the court, the cause was submitted to the jury, who retired to consider on their verdict.

After due deliberation, they returned into court and delivered the following verdict, to wit:

3 We, the jury, find for the plaintiff in the sum of twenty-two hundred and twenty five dollars and seventy-two cents.

New Orleans, Jan'y 26th, 1877.

B. T. WALSHE,
Foreman.

Whereupon it was ordered that the same be recorded."

Witness my hand and the seal of said court at the city of New Orleans, this 11th day of December, A. D. 1879.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said cer-
4 tificate is in due form of law, and that full faith and credit are due to his official attestations as clerk.

Given under my hand, at the city of New Orleans, in said district, this 11th day of December, A. D. 1879.

EDWARD C. BILLINGS, *Judge.*

(Endorsed:) Supreme Court U. S., 1879. October term. No. 189. Laura Ellen Jones, widow, &c., of S. A. Stockdale, pl'ff in error, vs. W. T. Blackwell. Amendment to record. Filed 15th December, 1879.

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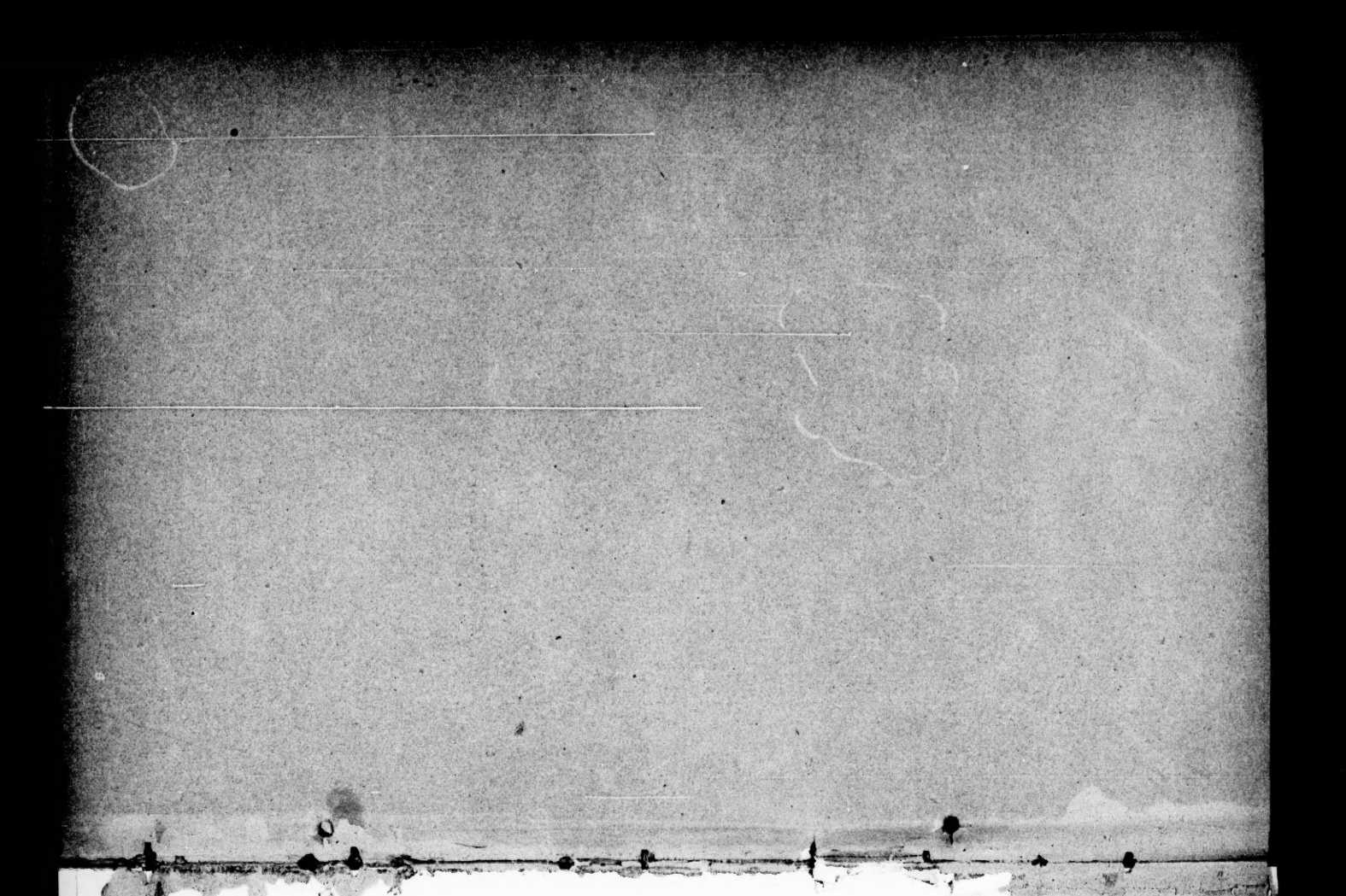

OFFICE SUPREME COURT U. S.
FILED
FEB 10 1880
D. W. MIDDLETON, Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1879.

LAURA E. JONES
v.
W. T. BLACKWELL. } No. 189.

ERROR TO U. S. CIRCUIT COURT FOR LOUISIANA.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1879.

LAURA E. JONES
v.
W. T. BLACKWELL. } No. 189.

ERROR TO U. S. CIRCUIT COURT FOR LOUISIANA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

Mr. Blackwell is now, and was during the year 1872, an extensive manufacturer of tobacco at Durham, N. C. S. A. Stockdale, the former husband and testator of the plaintiff in error, was collector of internal revenue at New Orleans, La., in 1872.

The evidence in the case tended to show that Mr. Blackwell shipped some tobacco in bond from Virginia to New Orleans, where it was put into an *export* bonded warehouse about June 13, 1872. On the first day of the next ensuing month, Mr. B.'s agent applied to Mr. Stockdale, then collector as aforesaid, to withdraw said tobacco from bond *for sale or consumption*, offering to pay for stamps or tax on said tobacco at the rate of 20 cents per pound, but the collector refused to permit its

withdrawal unless a tax at the rate of 32 cents per pound was first paid. The owner protested against and would not pay this tax, and the tobacco remained in the warehouse. In August, 1872, Mr. Blackwell tendered the collector money for stamps at the rate of 32 cents a pound, but the collector had none of that class on hand, and made requisition upon the authorities at Washington for them. Before their arrival at New Orleans, and about the last of August, 1872, Mr. B. was permitted to withdraw the tobacco from bond on the payment of 20 cents per pound. While thus detained in the warehouse the tobacco became damaged, and Mr. B. suffered loss thereby. (Record, 10, 11.)

To obtain satisfaction of the injury thus sustained, Mr. Blackwell filed his original petition against Mr. Stockdale, in the fourth district court for the parish of Orleans, November 16, 1872. Omitting title, formal conclusion, and signature, it is as follows:

"The petition of W. T. Blackwell, who resides at Durham, in the State of North Carolina, respectfully represents that S. A. Stockdale, who resides in New Orleans, is justly and truly indebted unto petitioner in the full sum of $3,197.70 for damage and loss by him sustained on 53 cases, containing 300 packages, manufactured tobacco, by him, petitioner, owned and placed in United States internal-revenue export bonded warehouse No. 1, in this city, on 14th June, 1872, and illegally detained in said warehouse in bond by defendant, *in his capacity of collector of United States internal revenue*, first district of Louisiana, from and after July 1, 1872, until August 29, 1872, contrary to and in direct violation of the express provisions and requirements of law and of petitioner's rights. By reason of all which illegal detention of said tobacco by defendant, and his refusal to deliver up the same to petitioner or his agent, in full

compliance with the requirements of law, petitioner has sustained damage to the amount of $3,197.70 as aforesaid, by being prevented from making a timely sale of said tobacco, by deterioration of said tobacco, and damage by mould, by expense of storage, insurance, interest, &c.; by loss of profit, by expense incurred in obtaining final release and delivery of said tobacco, and other incidental expenses, losses, and damage." * * * (Record, 3.)

To this petition a peremptory exception, in the nature of a demurrer, and equivalent to one at common law, was filed (Record, 5, bottom), and overruled (Record, 6, top).

The cause was tried in May, 1875, and a verdict for defendant rendered May 20, 1875 (*Ib.*), which was set aside June 7 (Record, 7, top), and a new or amended petition filed December 24, 1875 (*Ib*). Upon the second trial Mr. B. secured a verdict for $2,225.72. (Addition to Record, folio 3.) Upon this verdict judgment was entered. (Record, 9, 10.)

The defendant introduced evidence which tended to show that the Commissioner of Internal Revenue and said collector construed the act of June 6, 1872, c. 315, § 31 (17 Stats., 255), to levy the duty or tax of 32 cents due on all tobacco placed in bonded warehouse between the dates of June 6, 1872, and the 1st day of July, 1872, and for that reason demanded 32 cents per pound on the tobacco in question, and that the same was released from bond after the question had been referred to the Attorney-General of the United States, and he had decided that only a tax of 20 cents per pound was due on tobacco placed in bond at the time said tobacco was bonded.

That after the evidence was closed and before the jury retired to deliberate on their verdict, the court,

among other things, delivered to the jury as the opinion of the court, the following charges and opinion:

1st. That on and after the first day of July, 1872, and prior to the 3d March, 1873, the only tax imposed by law upon manufactured tobacco was 20 cents per pound, and that the collection of it was payable by the purchase of stamps from the collector of internal revenue.

2d. If the jury are satisfied that on and after the 1st day of July, 1872, the plaintiff was the owner of the tobacco described in the petition, and that the same was in a bonded warehouse, bonded, under the act of Congress, at the city of New Orleans, and that plaintiff, on and after the 1st day of July, 1872, demanded of the defendant the delivery of said tobacco, and at the same time offered to comply with all the forms of the law to pay the tax of 20 cents per pound thereon, and that the defendant refused to issue tax-paid stamps to the plaintiff, or to his agent, or to deliver the tobacco to the plaintiff, that then the refusal on the part of the defendant and any subsequent detention of the tobacco was unlawful, and entitles the plaintiff to a verdict for such damages as he actually sustained.

To which said ruling, opinion, and charge of the said judge to said jury the defendant, by his said counsel, did then and there except in open court.

That the said defendant, by her said counsel, did then and there submit to the court the following matter in writing, and did then and there pray the court that the same be delivered to the jury as the charge and opinion of the court in the premises, to wit:

"I am requested by the district attorney to charge you as follows: If the jury believe from the evidence that the late Sidney A. Stockdale was collector of internal revenue of the United States for the first collection district of Louisiana, at the time of the occurrence of the alleged matters complained of in the petition, in that case in the discharge of his duties as such officer he was charged with the duty of determining the construction and meaning of the laws of the United States imposing

internal-revenue taxes, subject to the direction of his superior officers and the determination of the courts. That his duties and powers in this respect were quasi judicial, and to entitle the plaintiff to recover in this cause the jury must be satisfied from the evidence that the said S. A. Stockdale, when acting as collector of internal revenue, in his decision as to how much tax was due and by him to be demanded from the plaintiff on the tobacco in question, did not commit an honest error of judgment, but acted in malice and intentional wrong, with intent to injure the plaintiff from improper and illegal motives."

And the court did then and there refuse to give the same to the said jury, and in relation thereto, and with said refusal, did give the jury in charge, as the law governing the said cause, the following charge and opinion, that is to say:

"I refuse to give that charge, but will charge instead that, if the jury are satisfied that the collector, acting under the instructions of the Commissioner of Internal Revenue, honestly believed that his construction of the law was correct, this cannot justify the defendant. It may be considered by the jury as tending to show that the collector acted with an honest purpose to enforce what he deemed to be the law, and that he acted without malice, that in case such was his purpose and motive, it would prevent the plaintiff from recovering damages beyond what he actually suffered, and it would have no other effect in this action.

"As to the measure of damages, the only remaining question, the damages are only those actually suffered. You will get at the amount of these damages as practical men. You have heard the evidence as to the condition of the tobacco at the time of this alleged demand and offer; you have heard the evidence as to its condition at the time when the defendant withdrew his refusal, because it is between these two dates that the unlawful detention existed. It commenced with the refusal and ended whenever you find that the refusal was withdrawn, that is, when Mr. Stockdale told the plaint-

iff he could have the tobacco on the payment of 20 cents per pound. You will compare the situation of the tobacco at these two times, and whatever deterioration you find to have taken place in that tobacco between these two points of time, that amount of damage the plaintiff, under the instructions I give you, is entitled to recover, together with the costs of storage during the period of detention which I have indicated." (Record, 11, 12.)

STATUTES.

The statutes affecting this case are these:

The pertinent sections of the act of 1868, c. 186, read as follows:

The act of July 20, 1868, c. 186, § 61, imposed "on all chewing-tobacco, fine cut, plug, or twist; on all tobacco twisted by hand, or reduced from leaf into a condition to be consumed, or otherwise prepared, without the use of any machine or instrument, and without being pressed or sweetened, and on all other kinds of manufactured tobacco, not herein otherwise provided for, a tax of thirty-two cents per pound." (15 Stats., 153.)

The seventy-first section of this act punishes "any person who shall remove from any manufactory, or from any place where tobacco or snuff is made, any manufactured tobacco or snuff without the same being put up in proper packages, or without the proper stamp for the amount thereon being affixed and canceled, as required by law; or, *if intended for export, without the proper warehouse stamp* being affixed; or shall use, sell, or offer for sale, or have in possession, except in the manufactory, or in a bonded warehouse, any manufactured tobacco or snuff, without proper stamps being affixed and canceled; or shall sell, or offer for sale, for consumption in the United States, or use, or have in possession, except in the manufactory or in a bonded warehouse, any manufactured tobacco or snuff on which only the warehouse stamp marking the same for export has been affixed." (15 Stats., 156.)

"SEC. 73. That the Commissioner of Internal Revenue, upon the execution of such bonds as he may prescribe, may designate and establish, at any port of entry in the United States, bonded warehouses for the storage of manufactured tobacco and snuff in bond, intended for exportation, selecting suitable buildings for such purpose, to be recommended by the collector in charge of exports at such port, to be known as export bonded warehouses, and used exclusively for the storage of manufactured tobacco and snuff in bond.

"Every such warehouse shall be under the control of the collector of internal revenue in charge of exports at the port where such warehouse is located, and shall be in charge of an internal revenue storekeeper assigned thereto by the Commissioner of Internal Revenue.

"No manufactured tobacco or snuff shall be withdrawn or removed from any bonded warehouse without an order or permit from the collector in charge of exports at such port, *which shall be issued only for the immediate transfer to a vessel*, by which such tobacco or snuff is to be exported to a foreign country as hereinafter provided, *or after the tax has been paid thereon.*

"And such warehouse shall be under such further regulations as the Commissioner of Internal Revenue may prescribe. Any manufactured tobacco and snuff may be withdrawn once, and no more, from an export bonded warehouse for transportation to any other port of entry in the United States where an export bonded warehouse for the storage of manufactured tobacco and snuff may have been established, and such manufactured tobacco and snuff so withdrawn shall, on its arrival at the second port of entry, be immediately warehoused in an export bonded warehouse for the storage of manufactured tobacco and snuff, from which it shall be withdrawn only as provided by law.

"SEC. 74. That manufactured tobacco and snuff may be removed in bond from the manufactory, without payment of the tax, to be transported directly to an export bonded warehouse for the storage of manufactured to-

bacco or snuff established at a port of entry as hereinbefore provided; and the deposit in and withdrawal from any bonded warehouse, the transportation and exportation of manufactured tobacco and snuff, shall be made under such rules and regulations and after making such entries and executing such bonds and giving such other additional security as may be prescribed by the Commissioner of Internal Revenue, which shall in all respects, so far as applicable, conform to the provisions of law and regulations relating to distilled spirits to be deposited in or withdrawn from bonded warehouse or transported or exported. All tobacco and snuff intended for export, before being removed from the manufactory, shall have affixed to each package an engraved stamp indicative of such intention, to be provided and furnished to the several collectors, as in the case of other stamps, and to be charged to them and accounted for in the same manner; and for the expense attending the providing and affixing such stamps twenty-five cents for each package so stamped shall be paid to the collector on making the entry for such transportation, but the provisions of this section shall not limit the time for tobacco or snuff to remain in bond." (15. Stats., 157, 158.)

The amendatory act of June 6, 1872, c. 315, § 31—17 Stats., 254, 255—amends the above printed sections (§§ 73 and 74) of the act of July 20, 1868, c. 186, by striking out and substituting as follows:

"That section seventy-three be amended by striking out all after the enacting clause and inserting in lieu thereof the following, to wit:

"That manufactured tobacco, snuff, and cigars, intended for immediate exportation, after being properly inspected, marked, and branded, may be removed from the manufactory in bond without having affixed thereto internal revenue stamps indicating the payment of the tax thereon. The removal from the manufactory of such tobacco, snuff, and cigars shall be made under such rules and regulations, and after making such entries and executing and filing, with the collector of the dis-

trict from which the removal is to be made, such bonds and bills of lading, and giving such other additional security as may be prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury. All tobacco, snuff, and cigars intended for immediate export as aforesaid, before being removed from the manufactory, shall have affixed to each package an engraved stamp, indicative of such intention, to be provided and furnished to the several collectors as in the case of other stamps, and to be charged to them and accounted for in the same manner; and for the expense attending the providing and affixing of such stamps, ten cents for each package so stamped shall be paid to the collector on making the entry for such transportation. When the manufacturer shall have made the proper entries, filed the bonds, and otherwise complied with all the requirements of the law and regulations as herein provided, the collector shall issue to him a permit for the removal, said permit accurately describing the tobacco, snuff, and cigars to be shipped, the number and kind of packages, the number of pounds, the amount of tax, the marks and brands, the State and collection district from which the same are shipped, and the number of the manufactory, and the manufacturer's name, together with the port from which the said tobacco, snuff, and cigars are to be exported; and the route or routes over which the same are to be sent to the port of shipment, and the name of the vessel or line by which they are to be conveyed to the foreign port. The bonds required to be given for the exportation of the tobacco, snuff, and cigars shall be canceled upon the presentation of the proper certificates that said tobacco, snuff, and cigars have been landed at any port without the jurisdiction of the United States, or upon satisfactory proof that after shipment the same were lost at sea.

"That section seventy-four be amended by striking out all after the enacting clause and inserting in lieu thereof the following, to wit:

"That from and after the date on which this act takes

effect there shall be an allowance of drawback on tobacco, snuff, and cigars, on which the internal tax has been paid by suitable revenue stamps affixed to the same before removal from the place of manufacture, when the same are exported, equal in amount to the value of the stamps found to have been so affixed, the evidence that the stamps were so affixed, and the amount of tax so paid, and of the subsequent exportation of the said tobacco, snuff, and cigars to be ascertained under such rules and regulations as shall be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. Any sum or sums found to be due under the provisions of this section shall be paid by the warrant of the Secretary of the Treasury on the Treasurer of the United States, out of any money arising from internal duties not otherwise appropriated: *Provided*, That no claim for an allowance of drawback shall be entertained or allowed for a sum less than fifty dollars, nor except upon evidence satisfactory to the Commissioner of Internal Revenue, that the stamps affixed to the tobacco, snuff, or cigars alleged to have been exported were totally destroyed before the shipment thereof, and that the same have been landed in a foreign country or lost at sea, and have not been relanded within the limits of the United States. All tobacco and snuff *now* stored in any export bonded warehouse shall, on and after July first, eighteen hundred and seventy-two, be subject to the same tax as is provided by this act, and shall, within six months after the passage of this act, be withdrawn from such warehouse upon payment of the tax, or for export under the regulations of the Commissioner of Internal Revenue now in force concerning withdrawals of tobacco and snuff from bonded warehouses. And any tobacco or snuff remaining in any export bonded warehouse for a period of more than six months after the passage of this act shall be forfeited to the United States, and shall be sold or disposed of for the benefit of the same in such manner as shall be prescribed by the Commissioner of Internal Revenue under the direction of the Secretary of the Treasury." (17 Stats., 254, 255.)

This act of June 6, 1872 (c. 315, § 31), had also enacted with reference to other sections of the act of July 20, 1868, "That on and after the first day of July next the act entitled 'An act imposing taxes on distilled spirits and tobacco, and for other purposes,' approved July 20, 1868, be and the same is hereby amended as follows:

"That section sixty-one be amended by striking out all after the second paragraph and inserting in lieu thereof the following words: 'On all smoking and chewing tobacco, fine-cut, cavendish, plug or twist, cut or granulated of every description; on tobacco twisted by hand, or reduced into a condition to be consumed, or in any manner other than the ordinary mode of drying and curing, prepared for sale or consumption, even if prepared without the use of any machine or instrument, and without being pressed or sweetened; and on all fine-cut shorts, and refuse scraps, clippings, cuttings, and sweepings of tobacco, a tax of *twenty* cents per pound.'" (17 Stats., 249, 250.)

It also enacts "that section 71 be amended by striking out, where they occur, the words 'or in a bonded warehouse,' and inserting in lieu thereof the words 'or while in transfer under bond or a collector's permit from any manufactory, store, or warehouse to a vessel for exportation to a foreign country.'" (*Id.*, 253, bottom.)

Then followed an immaterial amendment of section 72; and next the substitution of new sections 73 and 74, as they are above given.

ASSIGNMENT OF ERRORS.

The plaintiff in error assigns for error:

1. The overruling of the peremptory exception. (Record, 6.)

2. The allowance of a new or amended petition. (*Ib.*)

3. The instruction to the jury "that on and after the

1st day of July, 1872, and prior to March 3, 1873, the *only* tax imposed by law upon manufactured tobacco was 20 cents per pound; and that the collection of it was payable by the purchase of stamps *from the collector of internal revenue.*" (Record, 11; folio 29.)

4. The instruction that "If the jury are satisfied that on and after the 1st day of July, 1872, the plaintiff was the owner of the tobacco described in the petition, and the same was then in a bonded warehouse, bonded under the act of Congress at the city of New Orleans, and the plaintiff on and after July 1, 1872, demanded of the defendant the delivery of said tobacco, and at the same time offered to comply with all the forms of law to pay the tax of 20 cents per pound thereon, and that the defendant *refused to issue tax-paid stamps* to the plaintiff, or to his agent, *or* to deliver the tobacco to the plaintiff, that then the refusal on the part of the defendant, and any subsequent detention of the tobacco, was unlawful, and entitles the plaintiff to a verdict for such damages as he has actually sustained." (*Ib.*)

5. The refusal to charge thus, as requested by the district attorney:

"If the jury believe from the evidence that the late Sidney A. Stockdale was collector of internal revenue of the United States for the first collection district of Louisiana at the time of the occurrence of the alleged matters complained of in the petition, in that case, in the discharge of his duties as such officer he was charged with the duty of determining the construction and meaning of the laws of the United States imposing internal revenue taxes, subject to the direction of his superior officers and the determination of the courts. That his duties and powers in this respect were quasi judicial, and to entitle the plaintiff to recover in this cause the jury must be satisfied from the evidence that the said

S. A. Stockdale, when acting as collector of internal revenue, in his decision as to how much tax was due and by him to be demanded from the plaintiff on the tobacco in question, did not commit an honest error of judgment, but acted in malice and intentional wrong, with intent to injure the plaintiff, from improper and illegal motives." (Record, 11, 12.)

6. The instruction given instead of that requested and refused, viz:

"That if the jury are satisfied that the collector, acting under the instruction of the Commissioner of Internal Revenue, honestly believed that his construction of the law was correct, this cannot justify the defendant. It may be considered by the jury as tending to show that the collector acted with an honest purpose to enforce what he deemed to be the law, and that he acted without malice; that in case such was his purpose and motive, it would prevent the plaintiff from recovering damages beyond what he actually suffered, and it would have no other effect in this action." (Record, 12, folio 32.)

7. The instruction:

"As to the measure of damages, the only remaining question, the damages are only those actually suffered. You will get at the amount of these damages as practical men. You have heard the evidence as to the condition of the tobacco at the time of this alleged demand and offer; you have heard the evidence as to its condition at the time when the defendant withdrew his refusal, because it is between these two dates *that the unlawful* detention existed. It commenced with the refusal and ended whenever you find that the refusal was withdrawn, that is, when Mr. Stockdale told the plaintiff he could have his tobacco on the payment of 20 cents per pound. You will compare the situation of the tobacco at these two times, and *whatever deterioration you find to have taken place in that tobacco between these two points of time*, that amount of damage, the plaintiff, under the instructions I give you, is entitled to recover, together

with the costs of storage during the period of detention which I have indicated." (Record, 12, lower half.)

8. There was error in the assumption, pervading and the basis of the whole charge, that there was any unlawful detention of the tobacco in question.

9. There was error in assuming that the plaintiff was authorized to remove his tobacco for domestic consumption, or for any other purpose than that of export.

BRIEF.

I.

The peremptory exception (Record, 5, bottom) should have been sustained.

The petition (Record, 3, lower half) sets out no facts sufficient to justify a judgment for the plaintiff upon demurrer.

A peremptory exception, however, under the Louisiana Code, is more than a common-law demurrer.

The Civil Code of Practice declares, in "Art. 343, peremptory exceptions are those which tend to the dismissal of the action."

"Some relate to forms; others arise from the law."

Art. 344 requires those relating to forms to be pleaded in *limine litis*.

"ART. 345. Peremptory exceptions founded on law are those which, without going into the merits of the cause, show that the plaintiff cannot maintain his action, either because it is prescribed, or because the cause of action has been destroyed or extinguished."

Art. 346 permits peremptory exceptions, founded on law, to "be pleaded in every stage of the action, previous to the definitive judgment."

The defence of payment, or a prescriptive right, is to be set up by peremptory exception. (Gleisas *v.* Faurie, 6 La., 457; Lejeune *v.* Hébert, 6 Rob., 419; Boyers *v.* Vinson, 9 Rob., 518.)

It was also held that the objection that the petition contains *contradictory* allegations may be taken by per-

emptory exceptions. (Montross *v.* Hillman, 11 Rob., 87.) It is matter of substance, not of form. (*Ib.*)

It may be equally well objected to the petition that it contains no allegations of fact to sustain any action at all.

Art. 149, referred to in the last-cited case (11 Rob., 88), declares:

"The plaintiff is not allowed to cumulate several demands in the same action, when one of them is contrary to or precludes another."

But it is also thus provided in—

"ART. 161. It is sufficient in all judicial demands, which are required to be in writing, *to express clearly what is demanded, with such conclusions as may serve as a basis to the judgment* to be rendered in the cause."

The objection that the plaintiff does not set out any cause with such clearness as to afford a basis for the judgment is as much matter of substance as that he sets out contradictory claims.

II.

If the exception had been *sustained*, the plaintiff might have amended his petition; but after *overruling* the exception, it was error to allow the petition to be amended as it was. (Record, 7, 8.)

III.

The jury were told "That on and after the 1st day of July, 1872, and prior to the 3d of March, 1873, the *only* tax imposed by law upon manufactured tobacco was 20 cents per pound; and that the collection of it was payable by the purchase of stamps *from the collector of internal revenue.*

There were two errors (as we maintain) in this brief statement of the law, *if the tobacco was removable at all for home consumption.*

1. Twenty cents was not the *only* tax imposed upon *any* manufactured tobacco, if removable as aforesaid. Tobacco situated as the plaintiff's was, if it could be removed for use here, remained liable to the tax of 32 cents imposed by the act of 1868.

The act reducing the rate after July 1, 1872, in certain cases, was approved June 6, 1872. From that date it speaks.

Section 31 commences with the declaration, "That on and after the 1st day of July *next*" (*i. e.*, next to the day of the utterance of the language, June 6, 1872), the act of July 20, 1868, c. 186, should be amended so as to read in section 61 as the same is hereinbefore printed (*ante*, p. 11), reducing the tax to 20 cents a pound on all tobacco intended and removed for consumption in this country. (17 Stats., 249, 250.)

By its concluding section (§47) it was provided that the act should take effect August 1, 1872, except where otherwise provided. (*Id.*, 258.)

The clause that the plaintiff and court supposed to affect this tobacco reads:

"All tobacco and snuff NOW [June 6, 1872] stored in any export bonded warehouse shall, on and after July 1, 1872, be subject to the same tax as is provided by this act, and *shall* within six months after the passage of this act be withdrawn from such warehouse upon payment of the tax, or for export," &c. (17 *Stats.*, 255. See *ante*, p. 10.) Then follows a provision that all tobacco remain-

ing in the bonded warehouse more than six months after the date of the act shall be forfeited.

Mr. Blackwell's tobacco was not in the warehouse June 6, 1872. It was stored there June 13 or 14, 1872. (Record, 10, near bottom.) Only that particular stock of tobacco—the identical packages—which were in an export bonded warehouse on the 6th day of June, 1872, were entitled to the privilege of removal after July 1, 1872, upon payment of the tax at 20 cents per pound.

He who can understand the reasoning by which, in the Attorney-General's opinion (XIV Ops., 110), referred to in the record (p. 11, middle), "*now*" is construed to mean July 1, 1872, must expound it to the court; I cannot. To me the "*now*," in that very sentence, seems to be placed in sharp antithesis to July 1, 1872. Knowing precisely how the Attorney-General's opinions often have to be hastily prepared, by some subordinate, with argument heard only on the side of the tax-payer or claimant, perhaps I do not attach to them their due weight, such as is conceded them by other counsel—especially when in their favor.

The language of the statute in question, exactly as it reads, is clear and unambiguous. The difficulty arises from an attempt to construe that which is really too plain for construction.

In this effort, it is asked why discriminate between tobacco in the warehouse June 6, and that placed there between that day and July 1, 1872? I might content myself with replying, because it is so enacted; but I will add that, in my judgment, it was the product of the same policy which, in the very next clause, declared, for the first time in the history of this legislation, that all such tobacco remaining in the warehouse "for a period of more than six months from *the passage of this*

act [not from July 1, 1872, or August 1] shall be forfeited to the United States." (17 Stats., 255.)

Comparing the original section 73 of the act of 1868 (15 Stats., 157; *ante*, pp. 7, 8,) with the same section as amended by this act of June 6, 1872, and it is seen that while the former established export bonded warehouses, and provided for their management, the latter abolished this provision and substituted the method of transfer directly from the manufactory to the place of exportation. (17 Stats., 254; *ante*, pp. 7, 8.)

In order to dispense with the machinery of such warehouses, it was enacted that all tobacco might be taken from the factory to the vessel, so no more would go into the government storehouses; that which was *then* in the warehouses might be withdrawn on payment of tax or for export, and *must* be removed or forfeited by December 6, 1872.

If no provision was made for the withdrawal for home use of the trifling amount of tobacco stored between June 6 and July 1, 1872, no serious injury could ensue. It was not thought worth noticing, or escaped attention. In any event it was *not* provided for. It will be remembered that these establishments were, up to June 6, 1872, under the prior law of July 20, 1868, § 73, "bonded warehouses for the storage of manufactured tobacco and snuff, in bond, *intended for exportation*," the commissioner "selecting suitable buildings for such purpose, to be recommended by the collector in charge of *exports* at such port, to be known as *export* bonded warehouses," &c. (15 Stats., 157, § 73; *ante*, p. 7.)

The section continues: "Every such warehouse shall be under the control of the collector of internal revenue

in charge of *exports* at the port where such warehouse is located," &c. (*Ib.*) "No manufactured tobacco or snuff shall be withdrawn or removed from any bonded warehouse without an order or permit from the collector in charge of *exports* at such port, which shall be issued *only* for the immediate transfer to a vessel by which such tobacco or snuff is to be exported to a foreign country, as hereinafter provided, *or after the tax has been paid* thereon. (*Ib.*)

It is to be noticed that, although the mode of export is "hereinafter provided," *this one sentence is all the authority that existed* under the act of July 20, 1868, *for the withdrawal of tobacco from the bonded warehouses for home consumption;* and that clause was omitted from the amendatory act of June 6, 1872.

Only tobacco "intended for exportation" was expected to be put into these warehouses. Upon all other tobacco, when removed from the factory for consumption or sale, the tax must be paid. That removed or withdrawn from the bonded warehouse for sale in this country was only that in relation to which the manufacturer had changed his mind, after putting it into the warehouse for exportation.

It can be easily seen that the quantity thus circumstanced deposited between June 6 and July 1, 1872, was so small as not to attract the attention of Congress sufficiently to be thought worthy of special provision. It was desired, as the warehouses were to be abolished, that none should be so deposited, unless really meant for export after June 6, 1872.

If Mr. Blackwell had desired to *export* this tobacco, he could have withdrawn it for that purpose at any time, and that was all he had any right to do.

The act took effect to reduce the rate on tobacco "now" (June 6, 1872) in bond on the 1st day of July, 1872. As to *all* other tobacco (that could be consumed here) it took effect August 1, 1872. If tobacco stored June 13, 1872, could be removed for domestic consumption, it was subject to the old tax at least until August 1, 1872. If after this last date it could have been removed upon payment of twenty cents a pound tax, the instruction given was equally erroneous in fixing the date at July 1, and including in the damages all the deterioration suffered during the month of July, 1872.

2. It was error for the judge to instruct the jury that the collection of the tax was "by the purchase of stamps from the collector of internal revenue." (Record, 11, folio 29.)

The act of July 20, 1868, c. 186, § 67 (15 Stats., 155), though amended in some particulars (17 Stats., 253, middle), remained in force during July and August, 1872, as to the disposition of stamps. It required "suitable and special revenue stamps for the payment of the tax on tobacco and snuff" to be prepared under the supervision of the Commissioner of Internal Revenue, to be affixed and canceled in such manner as he might direct. "Also such export* stamps as are required by this act, which stamps shall be furnished to the collectors of internal revenue requiring the same, who shall each keep at all times a supply equal in amount to three months' sales thereof, and shall sell the same ONLY to manufacturers of tobacco and snuff *in their respective districts* who have given bonds as required by law; to owners or consignees of [foreign, see § 77; 15 Stats., 158]

* The word "export" was substituted for "warehouse" by act of June 6, 1872. (17 Stats., 253.) The substitution was because the warehouse system was abandoned.

tobacco or snuff *upon the requisition of the proper custom-house officer* having the custody of such tobacco or snuff; and to persons required by law to affix the same to tobacco or snuff on hand January 1, 1869." (15 Stats., 155, bottom.) Reference to sec. 78 of the same act shows who the persons last named were. (15 Stats., 159.)

Mr. Blackwell did not come within the class to whom alone the collector was authorized to sell stamps. All stamps were to be furnished domestic manufacturers by the collectors of internal revenue *within their respective districts* where the tobacco was manufactured.

Export, as well as other, stamps were to be *there* furnished. Act of July 20, 1868, c. 186, § 74 (15 Stats., 157, bottom), as amended by act of June 6, 1872 (17 Stats., 254, bottom; *ante*, pp. 11 & 12), the only amendment being that collectors *distraining* may sell stamps.

Prior to August 1, 1872, the only obligation Mr. Stockdale was under was to supply stamps to manufacturers bonded within his own district. After that date, when the act of June 6, 1872, took full effect, *all* tobacco was either bonded for *immediate* export or stamped to the full amount of the tax *at the place of manufacture*, and drawback allowed upon such as was shown to have been exported. (*Ib.*; *ante*, pp. 11 & 12.)

Mr. Blackwell's original petition states him to be a resident of Durham, N. C. (Record, 3, middle), and his merchandise and fame are so *in everybody's mouth* that the court almost take judicial cognizance of that fact. The exceptions state, however, that this tobacco was manufactured and shipped by the plaintiff in bond from *Virginia* to New Orleans. (Record, 10, folio 26.)

IV.

What has been already said applies also to the next instruction. (Record, 11, folio 29, instruction 2d; *ante*, pp. 4 & 12.) There is one suggestion that may be added: The jury were told if Mr. Stockdale "refused to issue tax-paid stamps to the plaintiff, *or to his agent*," such refusal was unlawful. (*Ib.*) It is suggested that the provisions just quoted are so strictly confined to "manufacturers in their respective districts," &c., that the delivery to an agent is unauthorized. The internal-revenue laws show that the customary methods of dealing with other merchandise cannot be applied to liquors and tobacco under these statutes. Sec. 63 required the name of any agent to be furnished the assessor of the district, and under § 75, where another furnishes the material, the stamps are to be affixed "by the *actual* maker or manufacturer."

V.

Inasmuch as the instruction requested by the district attorneys and that given in lieu of it, depend upon no special provisions of internal-revenue law requiring examination, they will be submitted without discussion of them upon the bare assignments of error, referring only to Cheatham *v.* U. S., 92 U. S., 85, & to Pullan v. Kinsinger, 2 Abbott's U. S. Ct. Reps., 99 *et seq.*, & cases there cited.

VI.

As to the measure of damages. (Record, 12, lower half; *ante*, pp. 5, 6.)

If I am right in holding that this tobacco could not

be withdrawn for domestic consumption, then the plaintiff was entitled to no damages at all. My ground on that point is, in short, that only a single sentence in the act of 1868 *inferentially* permitted this, and this sentence was dropped from the act of 1872; that the clause of the latter act allowing tobacco "now" in bond for export to be withdrawn for that purpose excluded from that privilege all tobacco subsequently put into the bonded warehouse.

If the rate of duty was reduced to 20 cents after August 1, 1872, and it could then have been taken out and stamped at that rate, the deterioration in *July* should not have been included in estimating the damages.

If the collector at New Orleans was only bound to supply stamps to manufacturers in his district, then the plaintiff was entitled to no damages. The reason for this requirement was that the inventory of stock on hand, the statement of the number of cutting-machines, presses, and other appliances used, of the amount of material bought, the registering of every cigar-maker, &c., were all required to be within the district where the business was carried on. (Act of 1868, c. 186, §§ 63, 65, 75, and 78; 15 Stats., 153, 159. Same not affected by act of 1872; Burroughs on Taxation, 643, *et seq.*) Yet these restrictions would be of far less utility if a manufacturer could buy stamps anywhere he pleased in the United States. By the inventories, returns, &c., alone could a collector tell what would be a three months' supply.

EDWIN B. SMITH,
Assistant Attorney General.

Supreme Court of the United States.

OCTOBER TERM, 1879.

No. 189.

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VS.

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Brief for Defendant in Error.

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Brief for Defendant in Error.

The recent rule which permits the plaintiff in error to delay his assignment of errors until he files his brief, which he often delays until the case is called for argument, compels Counsel for defendant in error, to anticipate what the assignment may be, and often leads to the discussion of points which the plaintiff abandons.

The rule is unfair to the defendant in error, who wishes to submit his case upon brief, because questions may be raised by assignments of error, which were not raised below, and may be discussed here, without the defendant, who submits his case upon brief, being heard upon them. We respectfully suggest that the former rule requiring errors to be assigned when the transcript is filed, should be restored. With these suggestions we proceed to a

STATEMENT OF THE CASE.

By the Act of Congress of June 6th, 1872, Sec. 31 (17 Stat. 249) the internal revenue tax upon manufactured tobacco was reduced from thirty-two, to twenty cents per pound on and after July 1st, 1872, and all tobacco in export bonded warehouse, was made subject to same rate of taxation on and after that date. (p. 255).

The plaintiff below was a manufacturer of tobacco in Virginia, and transported in bond from his manufactory to the Port of New Orleans, fifty caess of tobacco, which were entered and stored in an export bonded warehouse at that place, the 14th day of June, 1872.

On the 1st July, 1872, he made application to the proper Collector of Internal Revenue—the defendant below—to withdraw said tobacco from bonded warehouse for consumption, upon payment of tax, and offered to pay said Collector the full amount of tax thereon at the rate of twenty cents per pound, (together with all proper charges,)which the Collector refused to receive, and demanded payment of the tax at the rate of thirty-two cents per pound thereon. This the plaintiff below refused to pay, and the Collector persisting in his refusal to receive payment of such taxes at the rate of twenty cents per pound, the tobacco remained under his control in warehouse until the 29th of August, when he permitted it to be withdrawn upon payment of the tax at twenty cents. During the period of its detention the tobacco became seriously damaged, and the plaintiff was subjected to loss on account thereof. (See Petition, p. 3, and Supplemental Petition, p. 7.)

He brought suit for his damages in a State Court, which was removed by certiorari into the Circuit Court, (pp. 1, 2, 3).

The defendant dying *pendente lite*, the suit was revived against his representatives, (p. 8). A trial by jury resulted in a verdict for the plaintiff, (*additional record*, *p.* 1), and he had judgment, (p. 9).

On the trial the Court charged the jury in substance, that on and after July 1, 1872, the only tax imposed upon manufactured tobacco was twenty cents per pound; and that if on or after that date the plaintiff demanded from the defendant the delivery of his tobacco from warehouse, and at the same time offered to comply with all the forms of the law, and to pay the tax of twenty cents per pound thereon, and the defendant refused to issue the tax paid stamps required, or to deliver the tobacco to the plaintiff; that such refusal was unlawful and entitled plaintiff to such damages as he *actually sustained.* (*Bill of exceptions*, p. 10).

The defendant prayed the Court to charge the jury in substance, as follows:

That the Collector was charged with the duty of determining the construction and meaning of the internal revenue laws—that in this respect his duties were *quasi judicial;* and that to entitle the plaintiff to recover, it must appear that in his action in the premises the defendant "did not commit an honest error of judgment, but acted in malice and intentional wrong, and with intent to injure the plaintiff from improper and illegal motives."

But the Court refused so to charge, and charged in lieu thereof, in substance: that if the Collector acted without malice, the plaintiff could recover only such damages as he *actually* suffered; being the deterioration in value of the tobacco during the period of detention, together with the cost of storage during such time, (pp. 11 and 12).

ARGUMENT.

The only defense made in this cause in the Court below was, that the defendant acted under the orders of his superior officer, and without malice, and it was urged that this exempted him from damages in the premises.

The question is not a new one, and was determined by this Court more than forty years ago, and the correctness of the decision then made, has not, since then—until now—been doubted.

In the case of *Tracey et al.* vs. *Swartout*, 10 Peters, 80, *trover* was brought against the Collector for the Port of New York for certain casks of sirop of sugar cane. It appeared that the plaintiffs had imported certain casks of such sirop upon which the duty was fifteen per cent. ad valorem; that the plaintiffs were ready and willing, and offered to enter the goods at the legal rate of duty, and to give bond accordingly, and to do every act necessary to make such entry. Nevertheless, the defendant required bonds in a larger amount, and refused to allow plaintiffs to enter and secure the duties on the sirop at the rate required by law, and refused to deliver the sirop for a long time—over eighteen months—when it was de-

livered upon payment of duties, at fifteen per cent. ad valorem; whereby plaintiffs were damaged by the deterioration of the property, etc.

Upon the trial it was admitted that the Collector acted throughout *in entire good faith; and under instructions from the treasury department.*

It will be seen that the case is precisely like this one; rarely indeed are there cases so much alike in all respects. In passing upon this case the Supreme Court said:

"The Collector of Customs *is a ministerial officer;* he "acts under the instructions of the Secretary of the "Treasury, who is expressly authorized to give instruc- "tions, as to the due enforcement of the revenue laws."

"Do these instructions when not given in accordance "with the law, afford a justification to the Collector, "or exonerate them from the payment of adequate dam- "ages for an injury resulting from his illegal acts?"

"The Circuit Court, in their charge to the jury, *did not* "consider these instructions as a justification to the de- "fendant; *and in this they were unquestionably correct.*"

"The Secretary of the Treasury is bound by law, and "although in the excercise of his discretion he may "adopt necessary forms and modes of giving effect to "the law; yet, neither he, nor those who act under him, "can dispense with or alter any of its provisions. It "would be a most dangerous principle to establish that "the acts of a ministerial officer, when done in good "faith, however injurious to private rights, and unsup- "ported by law, should afford no ground for legal re- "dress. The facts of the case under consideration, will

"forcibly illustrate this principle. The importers offer "to comply with the law by giving bond for the lawful "rate of duties; but the Collector demands a bond in a "greater amount than the full value of the cargo. The "bond is not given, and the property is lost, or its value "greatly reduced in the hands of the defendant. When "a ministerial officer acts in good faith for an injury "done, he is not liable for exemplary damages; but he "can claim no farther exemption where his acts are "clearly against law."

"The Collector has a right to hold possession of im- "ported goods until the duties are paid, or secured to be "paid, as the law requires. But if he shall retain pos- "session of the goods, and refuse to deliver them, after "the duties shall be paid, or bond given or tendered, "for the proper rate of duties, he is liable for the dam- "age which may be sustained by this refusal."

* * * * *

"The Collector, in point of law, had no right to de- "mand a bond for more than the duties, at the rate of "fifteen per cent. ad valorem; and the plaintiffs were "under no obligation to give bond in a greater sum. "But the fact of having failed to give such illegal bond "was not a circumstance which should have lessened the "plaintiffs' damages, *nor in point of law*, should the "*good faith* in which the defendant seems to have acted, "*exempt him from compensatory damages.*"

Herein the Court but followed a long line of prece dents, which we briefly recapitulate at the risk of being charged with supererogation.

In *Conrad* vs. *Insurance Co.*, 6 Peters, 280, the possession of the Collector is said to be "a mixed possession " for the joint benefit of the importer and of the United " States. It leaves the importer's right to the immediate " possession perfect, the moment the lien for the duties " is discharged; *and if he tenders the duties, or the proper " security therefor, and the Collector or other officer refuses " the delivery of the goods, it is a tortious conversion of the " property, for which an action of trover or trespass will " lie.*" This case was cited with approval in *Tracey et al.* " vs. *Swartout, supra.*

See also *Conrad* vs. *Insurance Co.*, 1 Peters, 386; and *Conrad* vs. *Nicholl*, 4 Peters, 291.

In *Little et al.* vs. *Barreme et al.*, 2 Cranch, 170, Chief Justice *Marshall* held that orders from an executive department of the government "cannot legalize an act " which without those instructions would have been a " plain trespass."

In *Marbury* vs. *Madison*, 1 Cranch, 137, it was held, (CHIEF JUSTICE MARSHALL, being the organ of the Court), that duties imposed upon public officers, which affect the rights of individuals, give a right of action against such officers, for a refusal to perform such duties.

So it was held in New York that "wherever an indi- " vidual has sustained an injury by the misfeasance or " nonfeasance of an officer, who acts, or omits to act, " contrary to his duty, the law affords redress by an " action on the case, adapted to the injury." *Bartlett* vs. *Crozier*, 15 Johns. 254.

The rule has been applied to a variety of cases.

An action lies against selectmen for having refused to receive the vote of a qualified voter, although they acted without malice. *Lincoln* vs. *Hutchins*, 11 Mass. 350.

In *Barrow et al.* vs. *Arnaud*, 8 Adolph & E., N. S. 595, S. C., 55 Eng. Com. Law, 593, the Collector was held liable in case, for damages sustained by an importer, to whom he refused to deliver up certain corn until he received a certain sum which he claimed as duty, when no such duty was imposed by law.

So in *Barry* vs. *Arnaud*, 10 Adolph & E. 646, S. C. 37 Eng. Com. Law, 206, it was held that the Collector of Customs was a ministerial officer, and therefore liable in action for nonfeasance in the exercise of his office, as for refusing to sign a bill of entry without payment of an excessive duty.

Thus it will be seen that the rule in England in such cases is the same that our Courts have invariably followed.

But Collectors of Internal Revenue are made responsible by Sec. 5, Act of 1862, 12 Statutes, 434, both to the United States and individuals *for every "omission of duty."* And by the 44th Sec. of the Act of June 30, 1864, 13 Stat. 239, the commissioner is authorized to repay to Collectors all *damages* and costs, recovered against them in any suit against them by reason of anything done in performance of official duties.

This Court construing this provision in *Philadelphia* vs. *Collector*, 5 Wall. 731, said: "Evidently those clauses of

" the section contemplate different grievances and differ-
" ent remedies for their redress as known at common law
" and in the practice of the Courts." See also 14 Stat., 111.

These remedies at common law, are either case, or trover, the latter form of action being adopted in *Tracey et al.* vs. *Swartout, supra.*

In trover, malice need not be alleged. The *intent* of the defendant is immaterial—if he supposed himself to be justified in what he did, he will be equally liable to this action.

1 Chitty's Pleadings, 154.

When the act occasioning the damage is itself *unlawful*, the *intent* of the wrong-doer is immaterial in point of law, though it may enhance the damages.

1 Chitty, 389, and see particularly, ibid. 390.

When from the *nature* of the injury the defendant could hardly have been actuated by express malice, the *imputation may be and often is omitted.*

1 Chitty, 390.

The common law forms of action are not found in the practice in Louisiana, but the principles which govern the right to recover in such case are not different from those of the common law. ART. 2315 [2294] provides that " Every act whatever of man that causes damage to another, obliges him by whose fault it happens to repair it."

No exemplary or vindictive damages are claimed, and the Court properly instructed the jury that the plaintiff

was entitled to such actual damages as he had suffered.

Sedgwick on Damages, [525] [532].

The claim that the Collector acted in a *qaasi judicial* capacity, is under the decisions above cited, certainly without foundation. The law imposed a simple duty upon the Collector to receive the tax at a specified rate clearly fixed by law. If the rate of tax had varied according to the quality or kind of tobacco, he might have been required to determine the rate of tax in the premises. Even then he would be liable for an error of judgment. But there being but one rate of universal application, his duty was solely and purely ministerial—to collect the tax and deliver the tobacco. He might just as well have demanded $100 per pound as thirty-two cents.

The rule contended for by defendant would deprive the citizen of redress in every case of a wrongful act or decision of a collector if he could show that he acted honestly or under instructions of his superior, however mistaken he might be in the premises. It would deprive the citizen of the right to test the correctness of those decisions in the courts unless he could show a bad motive in the Collector.

We respectfully submit that the rule in Tracey vs. Swartout, and Conrad vs. Ins. Co., is the only true rule.

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JANUARY 20, 1880.

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Supreme Court of the United States.

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Supplemental Brief for Defendant in Error.

We had the honor to submit a brief heretofore in this case, wherein we discussed only the defense made in the court below, not then knowing what errors would be assigned in this Court. That defense is now virtually abandoned.

Of the assigned errors, the only one seriously insisted upon by the plaintiff in error is in substance that the Court charged the jury, that the plaintiff below had a right to withdraw his tobacco from bond on the 1st day of July, 1872, upon payment of tax thereon at the rate of twenty cents per pound.

This error is variously assigned, but the substance of all the assignments upon this point, is as above stated.

In view of the opinion of the Attorney General, given at the request of the Secretary of the Treasury, upon this

question, which was acquiesced in by that department, we confess we are not a little surprised, that the Department of Justice should now assign as error the ruling of a Circuit Court, which almost literally followed such opinion.

Whatever value, or how little value the Department of Justice may attach to the Opinions of its Chief, which establish a rule of action with an important executive branch of the government, the courts have invariably given great weight thereto; and we will therefore quote from the opinion referred to as follows, to wit:

"Taking Section 31, (Act of July 6, 1872), as a whole, "it is perfectly clear that Congress intended to impose "upon all manufactured tobacco remaining in the manu- "factory, or found stored in a bonded warehouse on the "1st of July, 1872, and withdrawn subsequently to that "date for consumption or sale, a uniform tax of twenty "cents per pound, unless the word 'now,' in that part of "the section above cited, subjects the particular tobacco "stored in a warehouse between June 6, the passage of "the act, and the said 1st of July, and thereafter with- "drawn for the purposes aforesaid, to a tax of thirty-two "and sixteen cents per pound, according to the quality "as provided in the Act of 1868. Any such discrimina- "tion, if made, ought to be founded upon good reasons "and clearly appear.

"Attention in considering this question is due to the "peculiar phraseology of the enacting clauses of said "section. This amendment is not made to take effect

" at once, but at some future date; and though per-
" fected and approved by Congress on the 6th of June,
" is not in fact made until the 1st of July. Certain
" words of the Act of 1868 are to be stricken out, and in
" lieu thereof, the words quoted above are to be inserted;
" but they are not to be inserted until the 1st of July.
" Can they have any force, or are they any more than
" proposed amendments prior to that time? Can words
" that are to be inserted at some future day in law, and
" at that time to become a part thereof, have any effect
" before the insertion is made? To hold that the amend-
" ment took effect on the 6th of June, by virtue of the
" word 'now' is to hold that on that day it reduces the
" taxes on certain tobacco from thirty-two to twenty
" cents per pound, if withdrawn as directed, although
" by its own express provision, it was not to be any part
" of the law until the 1st of July.

" To hold that the word 'now' relates to the time when
" the amendatory words are inserted in the old law, is not
" only reasonable in point of construction, but give to the
" act a reasonable and just effect. I need not say that, like
" much of the phraseology of our internal revenue laws, the
" language in question seems tautological and confused;
" but while it is more than probable that in the nume-
" rous amendments to the original draught of the bill,
" the precise meaning or effect of the word 'now' was
" overlooked, it is beyond doubt that Congress did not
" intend that there should be any change in the law un-
" til the 1st of July. To support this view, reference

" may be made to other parts of the act in question,
" which is to take effect, as elsewhere declared, on the
" 1st of August, 1872, but some of its provisions are to
" go into operation upon the passage of the act; in
" which cases the word 'now' is not used, but the words
" 'prior to' or 'after the passage of the act,' to indicate
" that time."

Section 42 of the Act is as follows: "That internal
" taxes *now* assessed or liable to be assessed against, but
" not collected from, ship builders as manufacturers, un-
" der Section 4, of the Act of March 31, 1868, entitled,
" 'An Act to exempt certain manufacturers from inter-
" nal tax and for other purposes, for sales of vessels, be,
" and the same are hereby, remitted, and no further
" assessments shall be made on account thereof.' Can
" this section, in consequence of the use of the word
" 'now' be constructed to mean that all taxes mentioned
" therein 'assessed or liable to be assessed,' on the 6th
" of June, when the act was passed, shall be remitted,
" and that such taxes 'assessed or liable to be assessed'
" between that time and the 1st of August, when the act
" takes effect shall be collected, or rather does it not
" mean that all such taxes 'assessed or liable to be as-
" sessed,' when the act takes effect, shall be remitted?"

Section 44, among other clauses, has the following:
" 'That no right of action barred by any statute now in
" 'force, shall be revived by anything herein contained.'
" Is it not clear that a defendant in a suit under this act,
" desiring to avail himself of the statute of limitations,

" could, if necessary to perfect the bar, include the period " between the passage of the act, and the time it took " effect?

" One idea suggested to show that the word 'now' " means the 6th of June, and not the 1st of July, is that " Congress intended to abolish bonded warehouses, and " was therefore unwilling to allow tobacco to be stored " therein between said dates, to be withdrawn upon the " payment of the new and lower tax. I do not see how " this would facilitate the destruction of such ware- " houses, when the act expressly declares that they may " continue and be used as therein provided, for six " months after its passage, at which time any tobacco " found in them, is to be forfeited to the Government.

" Section 73 of the Act of 1868, provides for the ex- " portation of tobacco through bonded warehouses, but " the amendment of 1870, which repeals that section " and provides for exportation from the manufactory, " clearly does not go into effect until the 1st of July; so " that it the right to store tobacco into bonded ware- " houses ceased on the 6th of June, by virtue of the " said word 'now' there would seem to be no way in " which tobacco, without payment of the tax, could be " exported from the United States, between that date " and the 1st of July. Assuming that the word 'now' " means the 6th June, it thence follows that there is no " way in which tobacco stored in a bonded warehouse " between said date and the 1st of July, can, after the " latter date, be withdrawn for exportation, without pay-

" ment of the tax; for on the 1st of July, the old law " was repealed and the right to withdraw tobacco after " that date for exportation, with respect to the time " when it was stored, is precisely the same as the right " to withdraw tobacco for consumption or sale.

" I do not see what difference it makes to the govern- " ment whether the tobacco is taken from a bonded ware- " house or from a manufactory after the 1st July upon the " payment of the new tax, unless possibly the payment " may be a little longer delayed in the one than in the " other case. On the 6th of June, it is said, there were " large quantities of tobacco in transitu from the manu- " factories to the bonded warehouses, and it certainly " seems inequitable that tobacco which reached the ware- " house on the 5th of June, and was withdrawn after the " 1st of July, should pay a tax of only twenty cents per " pound, while the same kind of tobacco that reached " the warehouse two days afterwards, and was withdrawn " at the same time, is compelled to pay a tax of thirty- " two cents per pound.

" Congress, with a view to the in" justice that might " be worked by a change in the law, before it could " be known to those whose interests were to be affect- " ed thereby, provided that section thirty-one should " go into effect on the 1st of July, and the residue of the " act, with a few exceptions, on the 1st of August. " Where it was evident no harm could result, the act in " a few instances, and where it is so expressly provided, " takes effect upon its passage. One of the evils of our

" legislature is the frequent change in the revenue sys-
" tem of the country, and unless it clearly appearf that
" the intent of Congress is otherwise, they ought to be
" construed so as to affect with equal justice all those
" upon whom they are intended to operate.

" My opinion is that all tobacco stored in bonded ware-
" houses and withdrawn for sale or consumption before
" the 1st of July, 1872, is subject to the taxes prescribed
" by the act of July 20, 1868, and that all tobacco in
" bonded warehouses on the said 1st of July, withdrawn
" after that date for the same purposes, is subject to tax
" prescribed by the act of June 6, 1872."

14. Opinions Atty's General, 110.

Such was the construction placed upon the act, in August, 1872, by the Department of Justice.

Now it is contended that tobacco *in transitu* to a bonded warehouse, and which did not arrive thereat until after the 6th of June, 1872, could not be withdrawn for consumption, but only for exportation—because, it is said, that the collector was not authorized to sell stamps to manufacturers *outside* of their respective districts.

The only limitation upon the authority of collectors to sell stamps is found in the act of July 20, 1868; and the right to withdraw tobacco from export warehouse upon payment of tax, expressly conferred by section 73 of the same act, was always construed to authorize the sale of stamps to consignees of such tobacco. And such right continued until six months after the passage of the act of June 6, 1872.

The construction contended for would be contrary to public policy, because to prohibit the withdrawal of tobacco from bond, upon payment of tax, would diminish the public revenue, and it is not to be presumed that Congress intended such a result. Nor is it to be presumed that Congress intended to discriminate against those manufacturers whose goods were in transitu at the time of the passage of the act, either by imposing a higher tax upon their goods, or by refusing them the common right of withdrawing them for home consumption, upon payment of the tax.

Moreover the restriction upon the sale of stamps was always construed by the Commissioner of Internal Revenue to limit the same to the parties named *only in their own districts*, and not to their consignees in other districts. And the sale was always allowed to dealers in their districts. See Regulations, 10 I. R. Rec. 61; 16 Ibid. 7.

The right to transport tobacco in bond from manufactory, to bonded warehouse, or from one bonded warehouse to another, (Sec. 73 of July 20, 1868) and to withdraw it therefrom on payment of tax, (ibid) makes this construction the only one possible, because no tobacco could be so withdrawn without first attaching the tax paid stamps thereto.

It is also contended, that if it could be so withdrawn, the tax thereon was thirty-two cents per pound, while upon all other tobacco, it was but twenty cents per pound. Such construction of the statute would render it

obnoxious to the provisions of Section 8, Art. I, of the Constitution, which requires uniformity in excise taxes.

But all these questions of construction arise from a disregard of the plain letter of the law. All changes in the law touching manufactured tobacco, effected by the act of 1872, are found in section 31 of said act, which first provides as follows:

"SEC. 31. *That on and after the first day of July next* the act entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes, approved July twentieth, 1868, be and the same is hereby amended as follows:"

Giving effect to the plain meaning of these words, that the amendment should be read as if made on July 1st, all difficulties vanish.

This is so obviously the intent of Congress, that the Court will, doubtless, find it unnecessary to consider the refinements of the counsel for the plaintiff in error.

Respectfully submitted,

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February 25, 1880.